

2 NINETY-EIGHTH LEGISLATURE
3 SECOND SESSION
4 LEGISLATIVE RESOLUTION 400

5 Introduced by Baker, 44

6 WHEREAS, the Legislature is charged with promoting fair
7 competition in all Nebraska telecommunications markets in a manner
8 consistent with the federal act; and

9 WHEREAS, the Legislature is charged with maintaining and
10 advancing the efficiency and availability of telecommunications
11 services; and

12 WHEREAS, the Legislature has previously debated and
13 structured the role of public utilities in delivery of
14 telecommunications through the enactment of LB 827 in 2001; and

15 WHEREAS, the Legislature is charged with ensuring that
16 consumers pay only reasonable charges for telecommunications
17 services; and

18 WHEREAS, the Legislature intends to preserve and promote
19 the best interests of the telecommunications consumer; and

20 WHEREAS, the Legislature enacted LB 827 in 2001, which
21 prohibited state agencies and political subdivisions from competing
22 with private sector companies in the provision of telecommunication
23 services but did allow for the use of such entities' dark fiber;
24 and

25 WHEREAS, the Nebraska Supreme Court found in In re
26 Application of Lincoln Electric System v. Nebraska Public Service

1 Commission, 265 Neb. 70 (2003), subdivision (1)(b) of section
2 86-128 and subsection (2) of section 86-575, originally contained
3 in LB 827, to be unconstitutional; and

4 WHEREAS, the United States Supreme Court recently issued
5 an opinion in Nixon v. Missouri Municipal League, 541 U.S.
6 (2004) in which the court held that "any entity" as stated in 42
7 U.S.C. section 253(a) of the Telecommunications Act of 1996 does
8 not include state political subdivisions, thereby upholding the
9 authority of states to restrict delivery of telecommunications
10 services by political subdivisions; and

11 WHEREAS, the Transportation and Telecommunications
12 Committee of the Legislature held a public hearing on AM 3471 to LB
13 20 on April 6, 2004, in response to Nixon v. Missouri Municipal
14 League; and

15 WHEREAS, the Transportation and Telecommunications
16 Committee desires to address reenactment of those provisions of LB
17 827 found unconstitutional by the Nebraska Supreme Court, but was
18 unable to do so before the Ninety-eighth Legislature, Second
19 Session, adjourned Sine Die; and

20 WHEREAS, the Legislature will address the issue during
21 the next Legislative session which convenes January 5, 2005; and

22 WHEREAS, the Legislature intends that the Public Service
23 Commission preserve and promote universal service in all
24 telecommunications markets.

25 NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE
26 NINETY-EIGHTH LEGISLATURE OF NEBRASKA, SECOND SESSION:

27 1. That the Legislature intends to address the decision
28 in Nixon v. Missouri Municipal League during the Ninety-ninth

1 Legislature, First Session, which convenes January 5, 2005.

2 2. That the Legislature intends to reenact the
3 provisions of LB 827 that were declared unconstitutional by the
4 Nebraska Supreme Court in In re Application of Lincoln Electric
5 System v. Nebraska Public Service Commission, 265 Neb. 70 (2003),
6 specifically subdivision (1)(b) of section 86-128 and subsection
7 (2) of section 86-575.

8 3. That the Legislature desires to convey these policy
9 statements to the Public Service Commission.